



## ***FRAUD FACTS***

### **Air Force Deputy General Counsel Contractor Responsibility**

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Fraud Facts is produced by the Air Force Deputy General Counsel (Contractor Responsibility) to present current information about selected fraud, and suspension and debarment actions. Many different agencies contribute to the investigation, prosecution, and completion of a case, including, but not limited to, the Air Force Office of Special Investigations and the Defense Criminal Investigative Service. We thank you for your continued support and assistance in protecting the government's contracting interests.

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### **BOEING: OFFICERS SUSPENDED**

On November 24, 2003, The Boeing Company terminated for cause the employment of two Boeing officials; one of whom was a prior Air Force employee. Boeing took the action after conducting an investigation that, according to Boeing, revealed that the former Air Force employee engaged in hiring discussions with a high ranking Boeing officer prior to disqualifying himself from participation in Boeing matters and while continuing to act as an Air Force acquisition official. Boeing's investigation showed that he discussed employment with Boeing over a three-month period prior to his refusal. Boeing disclosed its investigation to SAF/GCR.

On February 9, 2004 the Air Force suspended both Boeing officials pursuant to FAR 9.407-2(a)(7) because there was adequate evidence to believe that they committed an offense showing a lack of business integrity seriously affecting their present responsibility. The U.S. Attorney's Office for the Eastern District of Virginia is continuing to investigate the alleged misconduct.

### **EXTORTION & MONEY LAUNDERING—Washington, DC**

In December 2003, Robert Neal, Jr., the former Director of the Office of Small and Disadvantaged Business Utilization, U.S. Department of Defense, and his executive assistant, Francis Jones, were each sentenced by the U.S. District Court for the Eastern District of Virginia to serve twenty-four years for conspiracy, money laundering, extortion, and making false statements. Using their government positions within the Office of Small and Disadvantaged Business Utilization, Neal and Jones orchestrated multiple schemes to receive kickbacks and to extort funds from small businesses. In January 2004, the Air Force debarred Neal, Jones, and several of their affiliates pursuant to FAR 9.406-2(a)(1), which provides for the debarment of a contractor after the conviction of a crime in connection with public contracting. A special thanks to DCIS Agent Cynthia Stroot, FBI Agent Harvey Barlow, and AUSA Steve Learned and his office for their continued assistance in this case.



### Recent Debarments

Doro GmbH  
Northpoint Telecom, Inc.  
Range Technology  
Rick's Manufacturing  
T.A. Sheets Mechanical General Contractor, Inc.  
Christopher Hanson  
Deborah Stapleton  
Denna Kay Key  
Francis Delano Jones  
Lance McKinney  
Letha B. Jarvis  
Marina Heintz  
Matt Farrell  
Michael Amerson  
Nancy Miller  
Robert Gary Key  
Robert Lee Neal, Jr.  
Steve Brewster  
Thomas Alexander Sheets  
Timothy Lacey

### FAILURE TO PERFORM CONTRACT—*Hanscom AFB, MA*

In 2000, Eastern Video Systems, Inc. (EVS) was contracted to provide to the government video monitoring equipment at Hanscom Air Force Base, Massachusetts. EVS failed to perform under the terms of that contract and ignored numerous attempts by the government to contact the company. EVS' failure to perform was the cause of a ten-month contractor delay in implementation of a new monitoring system at the Hanscom Child Development Center. In 2003, pursuant to FAR 52.212-4(m), the Air Force terminated for cause its contract with EVS. Pursuant to FAR 9.406-2 (b)(1), which permits the Air Force to debar a contractor for either willful failure to perform or a history of failure to perform a contract, GCR debarred from government contracting EVS and four corporate affiliates for a period of three years. A special thanks to Hanscom Air Force Base Contracting Officers Susan Bergeron and Priscilla Busa for referring this case to GCR.

### SOCIAL SECURITY NUMBER FRAUD—*Maxwell AFB, AL*

J. R. Construction (JRC) was a subcontractor responsible for installing and finishing drywall on the Ambulatory Health Care Clinic project at Maxwell Air

Force Base, Alabama. Of the 65 JRC employees assigned to that project, 61 used social security account numbers that did not exist or belonged to someone else. AFOSI Special Agent Mark Brashears verified that several employees were illegal aliens, and that they were subsequently deported. JRC improperly classified its employees as "subcontractors" and failed to withhold FICA, state, or social security taxes from their wages. The company also withheld part of its employees' wages for medical insurance that did not exist and failed to pay overtime wages when required in violation of the Contract Work Hours Safety Standards Act. As a result of this seriously improper conduct and pursuant to FAR 9.406-2(c), which permits the Air Force to debar a contractor for any cause that is so serious or compelling that it adversely affects the contractor's present responsibility, GCR debarred from government contracting JRC and three affiliated entities for a period of three years.

### SALE OF DEFECTIVE AIRCRAFT PARTS—*Tinker AFB, OK*

Beginning in 2000, DLA issued several purchase orders for structural supports for the B-52H to AB Engineering and Molding (ABE). When the structural supports were tested, the majority of parts were found to be non-conforming. Sometime prior to April or May of 2003, ABE vacated its business premises without completing its government contracts, without notifying the contracting officer, and without providing a forwarding address. ABE also improperly disposed of technical military data. ABE, its affiliates—Advanced Engineering and Production, and Exact Cutting—and officers were debarred on March 26, 2004, pursuant to FAR 9.406-2(a)(5), (b)(1), (c). On March 4, 2004, the DoD-IG issued a safety alert for parts produced by ABE. A special thanks to Carol Matsunaga of DCMA for referring this case, and to Jerry Crosby of DCIS for spearheading the investigation.

### NON-PAYMENT TO A SUBCONTRACTOR—*Ogden ALC, UT*

Range Technology Corporation (RTC), a California corporation engaged in the business of supplying electronic parts, ordered \$80,000 in parts from a Russian subcontractor to complete an Air Force contract at the Ogden Air Logistics Center at Hill Air Force Base, Utah. Despite invoicing and receiving payment from the government for the electronic parts, RTC did not pay the subcontractor and falsely told the subcontractor that the



government had not paid for the parts. Subsequently, RTC declared bankruptcy and never paid the subcontractor for the parts. The Air Force debarred RTC and three of its officers in March 2004 for its false statements and failure to pay the subcontractors pursuant to FAR 9.406-2(c). A special thanks to Defense Intelligence Agency Agent Donald Dixon for his continued assistance in this case.

## GUILTY PLEAS

### *United States v. Jerry E. Greenwood*

On January 30, 2004, Jerry Greenwood, a GS-15, who worked as a Supervisory Acquisition Management Specialist in the Special Projects Office at Headquarters, Air Force Material Command, Wright-Patterson AFB, OH, pled guilty in the United States District Court for the Southern District of Ohio to having a financial interest in a company awarded a government contract, a violation of 18 U.S.C. § 208(a). Greenwood worked primarily with special access video teleconferencing. Before his retirement from AFMC, Greenwood assisted in preparing a statement of work and a justification and approval for a sole source contract to outsource his job. His brother's company the Greentree Group, was awarded the sole source contract and subcontracted the work to Greenwood's company, Jerry Greenwood Limited (JGL).

On September 23, 2003, the Air Force proposed the debarments of Greenwood and JGL pursuant to FAR 9.406-2(c), which permits the debarment of a contractor for conduct effecting its present responsibility. A special thanks to Special Agent Lance Novak of AFOSI, who investigated the case, and to Lt. Col. Robert Bartlemay, Deputy Director, Ethics and Fraud Remedies, Air Force Material Command Law Office, who prosecuted the case as a Special Assistant U.S. Assistant.

## FRAUD RECOVERY

### *United States ex rel. Nivens v. United Air Lines (D.S.C.)*

The Air Force has recovered \$1.6 million from the settlement of a False Claims Act case against United Airlines for performing defective work on C-17 engines at Charleston Air Force Base, SC. The total recovery was \$3.2 million of which the Air Force will receive \$1.6 million in single damages. Dennis Phillips of the Department of Justice litigated the case. Bridget Lyons, the lawyer for the C-17 SPO at Wright-Patterson, is arranging for receipt of the funds.

## OTHER RELATED NEWS

### **Boeing Not Liable for Retaliation**

Although unrelated to an Air Force contract, the following is an interesting news item directly involving an important Air Force contractor (Boeing) and indirectly involving another important Air Force contractor (Lockheed Martin). On February 18, 2004, a jury in California found that Boeing did not retaliate against a former engineer when it laid him off after he reported to the company that a colleague possessed confidential documents belonging to Lockheed Martin. *Raghavan v. Boeing Satellite Systems, Inc.*, Cal. Super Ct. No. BC267099. The engineer, Krishnan Raghavan, one of 125 employees laid off, alleged that he was included in the lay off because he had notified Boeing's legal and ethics offices that another Boeing employee (named Farmer), who formerly worked for Lockheed, possessed Lockheed proprietary documents relevant to a commercial satellite competition. There was no dispute that Farmer had possession of Lockheed's documents, but the jury apparently was not convinced that Boeing's decision to lay off Raghavan was linked to Raghavan's earlier whistle-blowing. See *Federal Contracts*, Vol. 81, No. 7 (Feb. 24, 2004).

### **Recent Federal Times Article**

The effects of suspension and debarment on small companies were recently discussed in the Federal Times. This article extensively quotes the Air Force Suspending and Debarring official, Steve Shaw, and provides some insight into the suspension and debarment process. The full article is at the below link:

<http://federaltimes.com/index.php?S=2769034>



## ETHICS CORNER

### Application of Procurement Integrity Compensation Ban to Program Managers

*by Mark Stone, AFMC Law Office, WPAFB*

The Procurement Integrity Law (41 USC § 423) contains a one-year ban on accepting compensation from a contractor. This ban applies to government employees who serve in one of seven positions or who make one of seven decisions regarding a contract over \$10,000,000 that was awarded to the contractor. Two of the seven positions are Program Manager and Deputy Program Manager. How are these terms defined? On August 10, 1999, the DoD Standards of Conduct Office issued a two-page memo entitled "Guidance on Application of Procurement Integrity Compensation Ban to Program Managers." Here is an excerpt regarding the definitions of Program Manager and Deputy Program Manager:

Who is a program manager for the purpose of the procurement integrity compensation ban?

Under FAR 3.104-4(d), a former DoD program manager or deputy program manager may not accept compensation, for a period of one year after such service, from the contractor for a contract in excess of \$10 million for which they served in such capacity.

To be covered by the ban, a Government employee must perform the functions of a program manager with respect to a contract in excess of \$10 million. Each DoD Component should determine, based on the particular circumstances, whether an employee is performing those functions. When issuing an ethics advisory opinion under the authority of 41 U.S.C. § 423(d)(5) and FAR 3.104-7, the DoD Component ethics counselor should consider the functions performed by the individual, for example whether he or she actively manages the program cost, performance and schedule of the assigned program, regardless of the title given the individual. (See *e.g.*, 10 U.S.C. § 1737(a)(1)). Ethics Counselors should also examine the duties of employees when there is uncertainty. A Program Executive Officer (PEO) will not normally be considered to be covered by the ban, provided the PEO does not perform the functions of a program manager for any particular contract. For joint service programs, which are under the auspices of OSD, OSD will determine whether an individual is performing the functions of a program manager.

\* \* \*

To be covered by the ban as a deputy program manager, a Government employee must have the authority to act on behalf of the PM in his or her absence, regardless of the title given the individual. See 10 U.S.C. § 1737(a)(2). However, just because an employee holds the title of Deputy Program Manager does not necessarily mean that he or she is covered by the ban. Each DoD Component should determine, based on the particular circumstances, whether an employee is serving as a deputy program manager. For example, if an individual holds the title of deputy program manager, but manages only personnel or administrative matters, this deputy should probably not be subject to the compensation ban for purposes of the Act.

*The full memo is available at:*

[http://www.defenselink.mil/dodgc/defense\\_ethics/dod\\_og\\_e/guidanceprocure.htm](http://www.defenselink.mil/dodgc/defense_ethics/dod_og_e/guidanceprocure.htm)

## Web Resources

SAF/GCR

<http://www.safgc.hq.af.mil/safgcr.htm>

Excluded Parties List Serve

[www.epls.gov](http://www.epls.gov)

Central Contractor Registration

<https://www.ccr.dlis.dla.mil/ccr/scripts/index.html>

Federal Acquisition Regulations

<http://www.arnet.gov/far/>

## Fraud Remedies Bulletins & Updates

Fraud Remedies Bulletins and Fraud Remedies Updates (formerly called Anti-Fraud Bulletins & Updates) are insightful tools addressing pertinent issues facing investigators and attorneys today, and are published by the Office of Fraud Remedies, SAF/GCR. For questions, please call John W. Polk, Director, Office of Fraud Remedies, SAF/GCR, DSN 425.0159; 703.588.0159. Previous Fraud Remedies Bulletins & Updates are available on SAF/GCR's website, which can be accessed as follows: from the FLITE homepage, click on "Site-Dod Legal," then click on "SAFGC," then click on "contractor responsibility," and finally click on "procurement fraud."

Recent fraud publications have discussed qui tam litigation, the Procurement Integrity Act, and the Anti-Kickback Act.



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